U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: LIN 06 119 51395 Office: NEBRASKA SERVICE CENTER Date: OCT 25 2007

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits her own statement and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's basis of denial.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Earth and Atmospheric Sciences from the Georgia Institute of Technology. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, atmospheric chemistry, and that the proposed benefits of her work, an improved understanding of chemical reactions important to the formation of pollution in the atmosphere, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the

national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The director concluded that the petitioner's three published articles, handful of citations and letters mostly from her immediate circle of colleagues were insufficient to establish her impact in the field. On appeal, the petitioner asserts that she had actually authored four published articles, been cited nine times and submitted letters from three independent experts in the field. She further asserts that her publication record should not be compared with those of far more experienced members of the field.

The petitioner must establish eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971). In order to demonstrate that her work had been published and, thus, disseminated in the field, the petitioner must demonstrate actual publication, not simply preparation, submission or acceptance for publication. The record before the director demonstrated that only three of the petitioner's articles had been published. On appeal, the petitioner submits evidence that her fourth article was published on the date of filing, March 15, 2006. Thus, we accept that the petitioner had authored four published articles as of the date of filing, although we note that it is difficult to gauge the impact of an article on the day it is published. We further acknowledge that the petitioner had presented her work at conferences.

As stressed by the petitioner on appeal, she is listed first among the authors on her articles. Nevertheless, the director did not make a factual error in stating that the articles were coauthored. Regardless of her position in the list of authors, the petitioner must still demonstrate the significance of the individual articles. In response to the director's request for additional evidence, the petitioner submitted three articles that cite her work. The petitioner notes on appeal that one of those articles cites three of her own articles and submits a self-citation by her Ph.D. advisor and coauthor, [redacted] While self-citation is a normal and expected process, it cannot establish the petitioner's influence beyond her own immediate circle of colleagues. Of the three citing articles submitted in response to the director's request for additional evidence, one of them is a "Preface" in *Aquatic Sciences* that reviews the ten articles appearing in that issue, one of which is the petitioner's article. This preface is not evidence of independent recognition of the petitioner's work. We concur with the director that the petitioner has not established that she is widely cited. Moreover, one of the independent articles, "Dimethyl Sulfide and Dimethyl Sulfoxide and Their Oxidation in the Atmosphere," suggests that the petitioner's theories have yet to be confirmed as valid for the marine atmosphere.

On appeal, the petitioner identifies [redacted] of the University of Michigan, [redacted] Hoffmann of the California Institute of Technology and [redacted] of the University of Leeds as independent references. [redacted] and [redacted] both assert that they learned of the petitioner through her reputation or by meeting her at a conference. [redacted] however, worked in the same location as the petitioner in 2005 and, according to the curriculum vitae of [redacted] coauthored an article with [redacted] in 2002 when [redacted] was the petitioner's doctoral advisor. That said, we will consider the letters in detail below.

Regarding testimonial evidence, Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of adding to the general pool of knowledge in the field or a positive response in the field are less persuasive than letters that provide specific, concrete examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are the most persuasive.

As stated above, the petitioner obtained her Ph.D. from the Georgia Institute of Technology in December 2004. Since that time, the petitioner has been working as a postdoctoral scholar at the Chemical Sciences Division (CSD) of the Cooperative Institute for Research in Environmental Sciences (CIRES), jointly sponsored by the National Oceanic and Atmospheric Administration (NOAA) and the University of Colorado.

[redacted] asserts that the petitioner studied the effect of aqueous phase reactions of organic sulfur compounds to the formation and growth of aerosols and cloud droplets, discovering previously unreported measurements of the chemical transformations and providing the latest or only information about how sulfur compounds degrade in cloud droplets under atmospheric conditions. In addition, the petitioner developed a computer model to simulate the effect of these reactions on aerosol growth in the atmosphere and in ice cores. This model showed that the reactions increase the reflection of solar radiation, thereby counteracting global warming induced by greenhouse gases. [redacted] concludes that the petitioner played a critical role in his National Science Foundation (NSF) funded project.

In a subsequent letter, [redacted] asserts that the petitioner's combination of education, training and past experience "places her in a position to benefit our national interest to a higher degree than most of her peers." He further asserts that her work is both original and scientifically significant and made significant contributions to his NSF funded project. He notes that the petitioner's presentations and articles were reported to the NSF in the laboratory's annual report. The record contains the report, which lists the petitioner's presentations and publications. He concludes that the petitioner's research "has contributed significantly to our understanding of the global sulfur cycle, thus facilitating accurate assessment of the contribution of both biogenic and anthropogenic sulfur to climate modification or regulation as well as other environmental issues such as visibility reduction, acid precipitation, and lower stratospheric ozone depletion."

[redacted] an assistant professor at the Georgia Institute of Technology, asserts that he served as the petitioner's Ph.D. co-advisor. [redacted] further asserts that the petitioner's work on the sulfur cycle "was long needed and fills in a significant knowledge gap." He discusses the importance of the petitioner's area of research and concludes that her ability to "bridge the experimental and modeling components of the atmospheric research distinguished her not only from other PhD graduate students in our program, but also from many other post-doctoral scientists normally encountered in atmospheric chemistry research." [redacted] an associate professor at the Georgia Institute of Technology, provides similar information.

[redacted] that he met the petitioner at a conference in 2003 and has followed her work ever since. While he reiterates that the petitioner provided original data that contributed to the overall pool of knowledge in her field, he does not assert that he has personally relied on her work. [redacted] asserts that he knew of the petitioner by her reputation and then met her at a conference in 2002. Dr. [redacted] does not explain the basis of the petitioner's "reputation" prior to 2002, at which time she had yet to publish a single article and had only presented her work at two conferences. While [redacted] praises the petitioner's novel experimental and modeling studies, he provides no examples of their use in the field.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D., is published in a reputable journal or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] Acting Director of CSD and a professor at the University of Colorado, discusses the petitioner's work at CSD. Specifically, the petitioner has focused on "the reaction of hydroxyl radical (OH) with acetaldehyde and the possible reactions of acetyl radicals with molecular oxygen to regenerate OH radicals." [redacted] explains that these reactions are important to the formation of urban ozone and the formation of ozone in the troposphere. [redacted] continues:

> [The petitioner's] work has provided important data on the rate coefficients for the reaction of OH with acetaldehyde under atmospheric conditions. These data are fundamental and essential in estimating the rate of ozone production, quantifying the photochemical smog formation mechanism, and finding strategies to control ozone pollution.

[redacted] concludes that the petitioner's experience in both liquid and gas phase reactions will allow her to obtain laboratory-based data essential for understanding and mitigating air pollution in the United States. [redacted] asserts that the petitioner has produced data for a model to simulate atmospheric ozone generation. While [redacted] explains why this area of research is important, he does not provide examples of other laboratories using the petitioner's models or other examples of her influence in the field.

[redacted] asserts that the petitioner's work at CSD "has provided such important information that [is] fundamental to estimate the ozone production rate due to these reactions, thus help us better understand [sic] the photochemical smog formation mechanism and find the strategy to control ozone pollution." [redacted] provides similar assertions, concluding that the petitioner's "innovative work has vital implications for the U.S. economy." As of the date of filing, the petitioner had not authored any published articles reporting her CSD studies and had presented this work at a single conference. Thus, it does not appear that any of this work had been sufficiently disseminated such that we can gauge its impact in the field as of the date of filing in this matter.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.